IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 12.12.2007

Coram

The Honourable Mr. Justice K. RAVIRAJA PANDIAN

and

The Honourable Mrs. Justice CHITRA VENKATARAMAN

Tax Case(Appeal) No.1179 of 2007

M/s. R.K. Textiles (India) ... Appellant

..vs..

The Asst. Commissioner of
Income Tax,
Business Range - IV,
Chennai - 600 034. ... Respondent

Appeal against the order of the Income-tax Appellate Tribunal "B" Bench, Chennai dated 27.7.2006 passed in I.T.A. No.1791/Mds/2003 for assessment year 2001-02. As against the order of the Commissioner of Income Tax VIII Chennai ITA 17/03-04, Chennai- 34. and as against the order of the Income Tax Officer Ward IV(4) Chennai in P.A.N/GIR No. AAAFR5429F/GIR No.1134R

For Appellant : Mr. Philip George

For Respondent : Mr. J. Naresh Kumar
Standing Counsel for I.T.

JUDGMENT

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(Judgment was delivered by K. RAVIRAJA PANDIAN, J.)

The appeal is against the order dated 27.7.2006 of the Income-tax Appellate Tribunal, 'B' Bench made in I.T.A. No.1791/Mds/2003. The relevant assessment year is 2001-2002.

2. The facts culled out from the statement of facts stated in the Memorandum of Appeal are as follows:-

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(i) The appellant is engaged in the business of manufacture and export of garments and also carrying on money lending business. For the assessment year 2001-2002, the appellant filed its return of income on 31.10.2001, admitting a total income of Rs.7,929/- after claiming deduction under Section 80 HHC to the tune of Rs.27,77,87,215/- and restricted the same to the extent of business income of Rs.2,25,49,119/-. While doing so, the appellant has shown interest income of Rs.8,66,033/- in the profit and loss account as part of its business income, since the same was received from finance debtors and on Certificate of Deposit and Fixed Deposits in the course of money lending business. While computing the deduction under Section 80HHC, the assessing officer reduced 90% of the interest income from the business income as per the explanation (baa) to section 80HHC to arrive at "profit of the busines5s".

(ii) The return was processed under Section 143(1) on 31.10.2002 and subsequently taken up for scrutiny and assessment was competed under Section 143(3) on 28.2.2003 by the assessing Officer by holding that the interest income will not qualify for deduction under Section 80HHC for the reason that it cannot be considered to be profit from export and therefore treated the same as income from other sources.

(iii) Aggrieved by the said order, the appellant filed an appeal before the Commissioner of Income Tax (Appeals), who, after considering all the facts and the issue of interest income and after considering the submissions made on such facts and law, allowed the appeal on the premise that the interest income received by the appellant was business income, since as per the guidelines of Reserve Bank of India, nobody can have the amount in foreign currency except for business purpose and only business people are entitled to maintain EEFC account and interest income earned were out of export business funds, which were invested in various categories and there was nexus between business carried out by the appellant and the interest earned.

(iv) The Department, feeling aggrieved by the opinion arrived at by the Commissioner of Income-tax(Appeals) , carried the matter on appeal before the Income Tax Appellate Tribunal, who, by the reasoned order, remitted the issued to the files of the Assessing Officer to give a finding on facts of the case as to whether the interest income of the appellant could be considered to be his business income by giving reason to the effect that in the order of the Authorities below, there was no finding as to whether interest income of the appellant could be considered to be his business income on the facts and circumstances of the case. While the Assessing Officer has gone on the premise that interest income could not be export income, whereas the Commissioner of Income Tax (Appeals) has dealt with on the premise that the interest could be business income.

3. The said order is now canvassed before this Court, by framing the following questions of law:-

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" (1) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not deciding the issue on merits in respect of the interest income by remitting back the issue to the file of the Assessing Officer?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in remitting back the issue of interest income to Assessing Officer by basing its decision on wrong presumption and premises, without considering the categorical findings of the Commissioner of Income Tax (Appeals), which was based on materials, reasoning and supportive case law on the issue?

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that the interest income derived by the appellant forms part of its "Business income", since the Assess is also engaged in the business of money lending?"

4. We heard the learned counsel appearing for both sides and perused the material on record, including the reasoning given by the Income Tax Appellate Tribunal for passing the impugned order.

5. The Tribunal, after hearing the parties, has stated that the term of the interest income is settled by a decision of this Court in the case of C.I.T. v. CHINNAPANDIAN ((2006) 282 ITR 389), wherein this Court held that for the purpose of 80HHC, 90% of the interest income has to be deducted as per the provision of Explanation (baa) to Section 80HHC of the Income Tax Act for the purpose of computation of profit of the business. In case the interest income is assessable under the head "Other Sources", the entire income would have to be excluded from the computation under Section 80HHC.

6. From the order of the Authorities below, the Tribunal was not in a position to cull out the categorical finding, whether the interest income of the appellant could be considered to be business income on the facts and circumstances of the case, as the Assessing Authority has held that the interest income could not be export income. On the other hand, the Commissioner of Income-Tax has dealt with the case that the interest could be the business income. In those circumstances of the case, the Tribunal, after pointing out the decision of this Court as to how the interest income has to be treated, in order to have a factual finding, remitted the matter back to the Assessing Authority to consider whether the interest income has to be considered as business income or not, in accordance with law laid down by this Court and to proceed further.

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7. We do not find any illegality or irregularity to interfere with the order passed by the Income-Tax Appellate Tribunal and hence the tax case appeal is dismissed.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssa.

To

1. The Assistant Registrar,
   Income Tax Appellate Tribunal,
   Rajaji Bhavan, III Floor,
   Besant Nagar, Chennai-90

2. The Commissioner of Income Tax (Appeal)VIII,
   121, Mahatma Gandhi Road,
   Chennai-34.

3. The Asst. Commissioner of Income Tax,
   Business Range - IV,
   Chennai - 600 034.

4. The Income Tax Officer,
   Ward IV (4),
   Chennai.

+ one cc to Mr. Philip George, SR.73383.

KS(CO)
RP 28.12.2007.

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